

## **Indiana Department of Environmental Management**

**Lori F. Kaplan, Commissioner**

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*(Text does not include verbatim comments)*

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Thank you for your welcome so early in the morning. It is a pleasure to join you today.

I don't know about you but I felt great waking up in one of Indiana's beautiful state parks! Before I joined the Indiana Department of Environmental Management a little more than a year ago, I was with the Department of Natural Resources. We had many meetings in State Parks, so I was able to visit them frequently, either for meetings or other business. Now, I find myself visiting places like landfills, superfund sites, and wastewater treatment plants – not that I mind visiting such sites, but the scenery, and sometimes the aroma, is quite different. So, I really appreciate the opportunity to back at one of our great State Parks.

I do have to say, however, that after a year at IDEM, I have a greater appreciation of the importance of water both above and below the ground. Water is essential for life on Earth and at least here in America, as well as for most of the developed world, we take clean, safe water for granted. That is, until a community faces higher sewer or water bills to fund improvements, or there is an extraordinary event like the contamination of the White River, which you will hear a little more about later.

But barring these types of things that tend to lead to a heightened level of awareness, technology has a way of skewing people's view of reality. People living in developed societies expect to turn on the tap to capture a glass of water to drink . . . time after time after time. And Americans certainly do not expect to see raw sewage flowing in front of their homes, as still happens in many undeveloped parts of the world.

However, to get to the level of water quality we have achieved in this country has taken a lot of hard work and commitment at all levels of our society. And it is because of the efforts of local, state and federal governments, and groups such as yours, that Indiana has made tremendous strides in cleaning up and preserving its water. Earlier this week, I had an opportunity to receive a briefing and tour the project underway in Indianapolis to address CSO and flood control problems along Pogues Run, a tributary of the White River. Discussed history – "Pogues Sewer".

While we have made great progress in improving water quality, there is more work, much more work, to be done. But at least we are headed in the right direction. And the theme for this 21<sup>st</sup> meeting of the Indiana Water Resources Association – improving and protecting water quality through assessment, regulation and policy – is the type of discussion and interaction that needs to happen to bring even greater benefits in the years to come.

Everyone in this room plays a vital role in helping us as scientists, regulators and policymakers ensure that we are on the right track to improving the quality of our state's water resources. Whether you work for IDEM, DNR, USGS, local government, the private sector or academia, each of you has an important part.

During my tenure with DNR, I had an opportunity to learn of the efforts of that agency in protecting and preserving Indiana's waters. When asked about the difference in jurisdiction between my former and current agencies, we often give the simplistic explanation: DNR has jurisdiction over water quantity and IDEM over water quality. However, there is a tremendous amount of overlap and it is often difficult to address one issue without addressing the other. For example, DNR often forays into the world of water quality through its floodway permitting program, work of the Division of Soil Conservation with Soil and Water Conservation Districts and the Lake and River Enhancement Program, and educational programs like Project WET, Riverwatch and the Adopt-A-River program.

I have had an opportunity to review the agenda for this meeting and it reads like a veritable "what's what at IDEM." It touches on a number of the major issues we face in protecting our water resources. I would like to focus my remarks on recapping some results of this past legislative session. Not surprisingly, water issues were at the forefront of environmental issues legislators tackled.

Two significant pieces of legislation eventually became one in Senate Enrolled Act 431 (SEA 431). This Senate bill is a little complicated. It contains many relevant aspects for IWRA members and I will try to give an overview of the most salient features pertaining to anti-degradation, designation of Outstanding State Resource Waters, referred to as OSRWs, CSO provisions, and TMDLs. I will just be giving an overview as many of these subjects have already been discussed in detail, or will be discussed later in the Symposium.

### **ANTI-DEGREDDATION**

For an Outstanding State Resource Water, degradation means any new or increased discharge of a pollutant, except for a temporary increase, that results in a significant lowering of water quality for the pollutant. However, the law does allow for new or increased discharges provided there is an overall improvement in the water quality for the Outstanding State Resource Water. Existing Outstanding State Resource Waters in Indiana include Lake Michigan and portions of the Blue River in southern Indiana, the North and South forks of the Wildcat Creek in North Central Indiana, and Cedar Creek in the Fort Wayne area. As an aside – recommend visiting one...

The Water Pollution Control Board must adopt rules that will prevent degradation, as well as allow for increases and additions in pollutant loading from an existing or new discharge.

And the rules must also include a definition of "significant lowering of water quality" which includes a de minimis quantity of additional pollutant load for which a new or increased permit limit is required and below which anti-degradation implementation procedures do not apply. The rules must also include two provisions in the event that a project will result in the lowering of water quality in an OSRW. First, the rules are to set out procedures to implement a water-quality project in an Outstanding State Resource watershed that will result in an overall improvement in

water quality in the OSRW. The second provision to be set out in the rules is that a permittee wishing to increase a pollutant loading to an Outstanding State Resource watershed can pay a fee into an improvement fund that would result in a watershed improvement project or projects. Such fees are not to exceed \$500,000.

### **DESIGNATION OF OSRWs**

The next major issue in the law that I would like to address, and which becomes effective in about two weeks (July 1), deals with the designation of Outstanding State Resource Waters. The law gives the Water Pollution Control Board the authority to adopt a rule designating a water body as an Outstanding State Resource Water if the water has a unique or special ecological, recreational or aesthetic significance.

It also provides criteria that must be considered by the Water Pollution Control Board prior to adopting a rule designating a water body as an OSRW. These criteria include economic impacts, biological criteria, current urban and agricultural development in the watershed, impact of designation on future economic development and whether designation is necessary to protect the unique or special ecological, recreational, or aesthetic significance of the water body. Prior to adopting a rule designating a body of water as an Outstanding State Resource Water, the Water Pollution Control Board must provide a written summary of its evaluation to the public. In addition, the IDEM commissioner must present a response to comments received during the rulemaking to the Environmental Quality Service Council.

### **CSOs**

Another significant segment of the law addresses the issue of combined sewers, long-term control plans and combined sewer overflow public notification. Reggie Baker, chief of the Wet Weather Section of IDEM's Office of Water Management, and canoe guide extraordinaire, will speak to you in more detail this afternoon about the CSO – combined sewer overflow – portion of the legislation. So I will limit my comments to just an overview of this topic. But let me first say that this part of SEA 431 simply puts into law what IDEM has been practicing since 1996 when we began to address this problem when issuing NPDES permits. The problem of CSOs exist because of the period of urban development in Indiana in the late 1800s and early 1900s when combined sewers were standard design. IDEM is aware of the historical nature of this problem and is focused on finding reasonable, aggressive and affordable solutions. IDEM is working with communities to develop approved long-term control plans.

SEA 431 gives the Water Pollution Control Board the authority to amend the water quality standards to allow a temporary suspension of fishable and swimmable designated uses. Suspensions of the standards may be granted on a site-specific basis for waters adversely affected by overflows from combined sewers during a significant rain event, provided IDEM has approved a long-term control plan for the community, which must be incorporated into the NPDES permit.

As we all know in this room, water in our streams and rivers can become extremely dangerous to human health after a combined sewer overflows and can remain a health threat for several days after a rain. For this reason, SEA 431 requires the Water Pollution Control Board to adopt rules to protect human health. Such rules are to require NPDES permit holders to notify residents of a

community about the potential health impact of combined sewer overflows whenever an overflow has occurred or is occurring or there is reasonable likelihood that a discharge will occur within the next 24 hours.

IDEM must provide guidance to all combined-sewer communities – 106 communities in all – to help them comply with laws and rules governing CSOs before October 1, 2000.

### **TMDLs AND IMPAIRED WATER BODIES**

Senate Enrolled Act 431 also has an impact on IDEM's Assessment Branch programs. It sets out some requirements for the preparation of the state's impaired water body list and requires IDEM to increase its public comment period from 30 days to 90 days. The methodology we use to add or remove streams from this list will be set out in administrative rules, so that everyone will know and understand the process, and by October of 2003, IDEM must have rules developed for how it will assess Total Maximum Daily Loads for these streams. A Total Maximum Daily Load describes the amount of specific pollutants that can be in water throughout its course and still meet state water-quality standards. Each discharger then must discharge within a prescribed limit so that the stream meets the state's water- quality standard.

The legislation calls for the establishment of two advisory groups to assist the Office of Water Management in evaluating the water quality assessment programs and the TMDL program. The Environmental Quality Service Council is to appoint a Water Data Task Force to assess IDEM's resource needs for the program.

This group is to consist of legislators, members of the Water Pollution Control Board, IDEM, academia, industry, agriculture, municipalities, citizens, environmental advocacy groups and professionals from other specific governmental agencies.

The second advisory group is to be set up by IDEM and is to be a TMDL Work Group of stakeholders. The work group will consider and make recommendations to IDEM and the Water Pollution Control Board on identification of issues, development of policy options, policy adoption and rulemaking. This work group will consist of members of the general public, municipalities, industry, business, agriculture, environmental advocacy groups, a representative of the Environmental Quality Service Council, a member of the Water Pollution Control Board and other individuals with expertise in TMDLs. We are currently in the process of pulling this group together and it should be having its first meeting within the next month.

### **CONCLUSION**

In conclusion, and as a segue way into the next two speakers, let me take a few moments to reflect on our jobs and avocation as the keepers and protectors of our natural resources. For those of us who represent government agencies, our commitment and abilities to assess, regulate and develop sound environmental policy are often in question.

As dedicated public servants, we must work very hard every day to demonstrate our commitment to the people of Indiana. We need look no further than the significant event six months ago that had a huge impact on the environment and citizens living in Central Indiana, as well as the rest

of the state. The contamination of the White River made us take stock of the fragile nature of the resources we are charged to protect and improve.

My good friends at DNR, along with my colleagues at IDEM, rallied to respond to this event. Those days in late December and January were very difficult days. Staff worked around the clock to ascertain the cause and searched in vain to stem the destruction, as the public questioned our ability. However, we went about our work, pulling thousands of water samples and began an investigation that has ultimately led to a civil suit against those who were responsible. In retrospect, and as a part of our self-evaluation, we have tried to ascertain what we could have, should have, done differently in response to this environmental emergency. We could not have responded any quicker, as we were there as soon as we knew of the magnitude of the fish kill. What we could have done better, and what we have begun doing better since, is communicate with the public. It was a hard lesson, and a painful lesson, but one I am very hopeful that we are on the other side of.

Many dedicated staff from across several state agencies came together to respond to the need to find those responsible for this environmental disaster. As Matt Rueff will share with you shortly, the incident on the White River became as compelling as any mystery Hollywood could dream up. Our resolve to put the pieces of the puzzle together led to an investigation conducted at break neck speed and the filing of a very complicated federal civil complaint in an unprecedented amount of time. It took many people working together to accomplish and complete our investigation and my heartfelt thanks go to each and every one of them.

In closing, thank you for inviting me to spend a few minutes with you as you gather together to share and learn from each other. I also extend my best wishes for a successful meeting as we begin to work on tomorrow's environmental challenges to our state's waters.